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March 4, 1999

HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Ex Parte Presentation

Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911
Emergency Calling Systems

CC Docket No. 94-102

In the Matter of Applications for Transfer of Control to SBC Communications,
Inc. of Licenses and Authorizations Held by Ameritech Corp.

CC Docket No. 98-141/

Dear Ms. Salas:

On March 3, 1999, Ira Barron, Vice President - Marketing and Business Development for SCC Communications Corp. ("SCC"), Robert Cohen, Vice President - Government Relations for SCC, Howard Symons of this office, and the undersigned met with Alan Thomas of the Common Carrier Bureau and separately with William Dever, Michelle Carey, Elizabeth Nightingale, and Audrey Wright of the Common Carrier Bureau to discuss matters related to the above-referenced dockets.

At these meetings, we discussed SCC's provision of E-911 services; location identification problems that arise from the use of Private Branch Exchange ("PBX") and other dispersed private telephone systems; and dealings with SBC Communications that have arisen in connection with SCC's provision of E-911 services in Texas. Attached to this letter are copies of

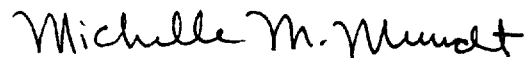
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Ms. Magalie Roman Salas
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a Motion to Intervene and a Brief of Threshold Issues that SCC filed with the Public Utility Commission of Texas, which were provided to the Commission participants at the meetings.

Pursuant to sections 1.1206(b)(1) and (b)(2) of the Commission's rules, an original and two copies of this letter and attachments are being filed with the Office of the Secretary. Copies of this letter without attachments are also being served on the Commission personnel that attended the meetings.

Sincerely,

A handwritten signature in black ink that reads "Michelle M. Mundt". The signature is written in a cursive, flowing style.

Michelle M. Mundt

cc: Alan Thomas
William Dever
Michelle Carey
Elizabeth Nightingale
Audrey Wright

DCDOCS: 145577.1 (34bt01!.doc)

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PUC DOCKET NO. 20334

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EMERGENCY PETITION OF THE §
ADVISORY COMMISSION ON STATE §
EMERGENCY COMMUNICATIONS §
AND THE GREATER HARRIS §
COUNTY 9-1-1 EMERGENCY §
NETWORK FOR DECLARATORY §
RULINGS ORDERING SOUTHWESTERN §
BELL TELEPHONE COMPANY TO §
UNBUNDLE ITS 9-1-1 NETWORK AND §
9-1-1 DATABASE MANAGEMENT §
SYSTEM §

PUBLIC UTILITY COMMISSION
OF TEXAS

SCC COMMUNICATIONS CORPORATION'S
BRIEF ON THRESHOLD LEGAL/POLICY ISSUES

TO THE HONORABLE COMMISSIONERS:

COMES NOW SCC Communications Corporation ("SCC"), an intervenor in this proceeding, and files this its Brief on Threshold Legal/Policy Issues.

Recasting the Context of the Identified Issues

What this Docket is about is the provision of timely and accurate emergency communications services through equipment that Southwestern Bell Telephone Company (SWBT) has previously tested successfully but now refuses to implement for Petitioners and their selected 9-1-1 SR/ALI database provider. Its inception lies in SWBT's misguided belief that it controls the operation of 9-1-1 in Texas and its desire to preserve a financial interest in 9-1-1, despite the fact that its bid proposal was not selected. The phrasing of the issues to be briefed, however, reflects the interconnection paradigm of local exchange competition, rather than the unique, private network context of 9-1-1.

This is not a case in which a CLEC is asking for network unbundling to permit it to provide local service; there is no carrier-to-carrier network and facilities interconnection involved here. Rather, it is the Advisory Commission on State Emergency Communications (ACSEC) and the Greater Harris County 9-1-1 Emergency Network (GHCEN), governmental bodies charged with responsibility for, and empowered with authority over, 9-1-1 communications, that have petitioned the Commission to instruct SWBT to functionally unbundle its handling of 9-1-1 calls so that emergency communications can be improved through real-time interjection of routing information directly from SCC's SR/ALI database.

One might expect SWBT to willingly cooperate with these governmental bodies to implement a process that these same parties had successfully tested in Houston two years ago. One might also expect SWBT to recognize that proper control over the private emergency network lies with these governmental bodies. SWBT nonetheless casts itself as the sole authority, the "benevolent dictator," of 9-1-1 networking issues, and in so doing is trying to take advantage of its status as an incumbent local exchange carrier to usurp the Petitioners' role. SWBT has responded to Petitioners' initiation of this Docket by advancing theories about how federal law which governs transport and switching facilities in the arena of local competition somehow controls the deployment of state-controlled, private emergency networks. Such behavior would be unthinkable from any other entity; it is only because SWBT is so accustomed to wielding its monopoly power that this situation could even arise.

The Texas legislature enacted comprehensive legislation to encourage units of local government to develop and improve emergency communication procedures and facilities.¹ To achieve public safety goals, the legislature charged ACSEC with the duty to administer the

¹ See, e.g., 9-1-1 Emergency Number Act, TEX. HEALTH & SAFETY CODE ANN. § 772.102 (Vernon Supp. 1999); Emergency Communication District Act, *id.* at § 772.202; Emergency Telephone Number Act, *id.* at § 772.302

implementation of statewide 9-1-1 service.² ACSEC also is empowered to develop minimum performance standards for equipment and operation of 9-1-1 service in developing regional 9-1-1 plans.³ In particular, ACSEC has the obligation to assist in planning, supporting, and facilitating 9-1-1 databases, and may provide contracts for services that enhance the effectiveness of 9-1-1 service.⁴ It also may enforce any provision of Texas Health and Safety Code chapter 771 or ACSEC rule adopted by a local emergency communications district.⁵ As for the GHCE, it is considered to be a public body, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes of its existence.⁶

SCC respectfully urges the Commission to consider the threshold issues in this context and to look beyond the analytical structure applicable to what effect, if any, local competition under the federal Telecommunications Act of 1996 (FTA) has on the Texas Utilities Code in the context of 9-1-1.

1. Is SWBT obligated under state or federal law to provide unbundled access to its 9-1-1 network and 9-1-1 Database Management System services?

As discussed in response to Question 5 below, § 251(c)(2) of the FTA does not require SWBT to provide SCC unbundled access to its 9-1-1 network because SCC is not a telecommunications carrier. Nevertheless, telecommunications carriers like SWBT must furnish

² *Id.* at § 771.051(1).

³ *Id.* at § 771.051(2).

⁴ *Id.* at § 771.051(7) and (8).

⁵ *Id.* at § 771.062.

⁶ *Id.* at § 772.113.

providers of information services, which include E9-1-1 services,⁷ with access to carrier networks on an unbundled basis pursuant to obligations that pre-date the FTA by a decade and remain in effect today.⁸ Further, the FCC has recognized that open access rules must evolve so that intelligent networks are accessible to information service providers.⁹

While SCC is not claiming rights to interconnect under § 251 of the FTA, the FCC's order implementing § 251 provides a useful analogy for ascertaining the scope of unbundling obligations an ILEC owes to a competitive provider of E9-1-1 services. In the *Local Competition Order*, the FCC required ILECs to provide unbundled access to call-related databases because it found such access to be technically feasible and essential to the development of competition among telecommunications service providers.¹⁰ The FCC also observed that only ILECs currently maintain 9-1-1 and E9-1-1 services, including underlying Automatic Location Indicator databases, making mandatory unbundling crucial to competition. *See id.* at ¶ 470. The same reasoning applies with equal force where competing 9-1-1 providers seek access to an incumbent's databases.¹¹

⁷ See, e.g., *In the Matter of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities*, CC Docket No. 96-149, *Memorandum Opinion and Order* at ¶¶ 17-19 (rel. Feb. 6, 1998) (*Forbearance Order*) (finding that BOC E9-1-1 services are information services).

⁸ See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, 104 FCC 2d 958, 964 (1986) (subsequent history omitted); see also *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements, Further Notice of Proposed Rulemaking*, 13 FCC Rcd 6040, 6050 (1998).

⁹ *Intelligent Networks, Notice of Inquiry*, 6 FCC Rcd 7256 (1991).

¹⁰ See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 at ¶¶ 484-92 (1996) (*"Local Competition Order"*), affirmed in part and vacated in part *sub nom. Iowa Utilities Bd. v. FCC*, No. 96-3321 (1999).

¹¹ As noted above, the FCC's unbundling provisions provide analogous support for SCC's claims in this proceeding. While the Supreme Court has remanded these provisions to the FCC, the Chairman of the FCC has announced that all the BOCs, including SWBT, have agreed to fulfill their current obligations to provide unbundled network elements while the FCC reviews its rules. See *Address of William E. Kennard, Chairman, FCC, to Comptel 1999 Annual Meeting and Trade Exposition* (Feb. 8, 1999) <www.fcc.gov/Speeches/Kennard/spwek905.html>.

Federal laws that affect SWBT as a local exchange carrier do not limit its obligations with respect to regulations that control the State's private 9-1-1 network. Significantly, the FCC has not prohibited states from imposing information service provider (ISP) unbundling obligations on the Bell Operating Companies (BOCs) in addition to what is required under the FTA. This Commission has broad authority under 60.022(a) of the Texas Utilities Code to require unbundling of LEC services at the request of an information service provider, in addition to any unbundling required by the FCC. Therefore, SCC does not need to rely on Federal law to support its request for interconnection and nondiscriminatory access to SWBT's network elements on an unbundled basis.

At a minimum, the Commission can and should require *functional* unbundling of SWBT's E9-1-1 service. Unbundling the elements of E9-1-1 service will allow ACSEC and the State's emergency communication districts to award bids on specific elements of E9-1-1 service — such as the SCC database at issue in this case — without the specter of paying the third party provider *and* SWBT for duplicative service. SWBT's insistence on using its own database, updated only periodically in a batch mode and subject to correction only at the initiative of SWBT personnel, defeats the purpose of having a third party database provider and is contrary to the intent of both the FTA and the competition provisions of PURA. SWBT is deliberately preventing SCC from fulfilling the requirements of its contract with ACSEC, thereby perpetuating its monopoly—again contrary to the inherent purpose behind recent state and federal legislation. *See, e.g., TEX. UTIL. CODE ANN. § 60.001(1)* (“To the extent necessary to ensure that competition in telecommunications is fair to each participant and to accelerate the improvement of telecommunications in this state, the commission shall ensure that the rates *and rules* of an incumbent local exchange company are not unreasonably preferential, *prejudicial*, or *discriminatory*” (emphasis supplied)). This provision alone

permits the Commission to require SWBT to unbundle its 9-1-1 network and 9-1-1 Database Management System services.

2. Is SWBT obligated under state or federal law to allow other providers direct access to SWBT's 9-1-1 tandem to permit real time data interjection for the purpose of real-time routing of 9-1-1 calls?

SWBT does not have an explicit *obligation* under state or federal law to allow providers direct access to its E9-1-1 tandem to permit real time data interjection, but neither does state or federal law prevent it. The provision of E9-1-1 service using a State-selected database provider is markedly different from other telecommunications services. Calls to Public Safety Answering Points obviously implicate public safety issues, and directly affect the police power of the State and the State's obligation to protect the State's citizens.

The State's "police power" is a grant of authority from the people to their government agents for the protection of the health, safety, comfort, and welfare of the public. *Grothues v. City of Helotes*, 928 S.W.2d 725, 729 n.6 (Tex. App.—San Antonio 1996, no writ). Because the health and safety of the states' citizens are primarily and historically matters of local concern, the states traditionally have had great latitude under their police powers to protect the lives, health, and comfort of all persons. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475, 116 S. Ct. 2240 (1996). Any claim that federal law supercedes the historic police powers of the states must overcome an assumption that preemption was not intended absent the clear and manifest purpose of Congress. *Id.* at 485; *see also MacDonald v. Monsanto Co.*, 27 F.3d 1021, 1023 (5th Cir. 1994).

As the agency that has been given regulatory power over telecommunications utilities, the Commission has the authority to insure that public utilities conform to the requirements developed by the other State agencies charged with designing and administering the State's emergency communications. Indeed the legislature's delegation of regulatory power over public utilities is

expressed in the broadest possible terms. *Public Utility Comm'n of Texas v. Southwestern Bell Tel. Co.*, 960 S.W.2d 116, 119 (Tex. App.—Austin 1997, no writ). This delegation includes the power to do all things, whether specifically designated in PURA or implied therein, necessary and convenient to the exercise of the Commission's power and jurisdiction. *Id.*; TEX. UTIL. CODE ANN. § 14.001. A delegation of power to an administrative agency, in such broad and general terms, implies a legislative judgment that the agency should have the widest discretion in fulfilling its responsibilities. 960 S.W.2d at 119. As SCC pointed out initially in this Brief, SCC believes the Commission can and should find that the unique governmental interest in 9-1-1 service warrants granting the relief requested in this case.¹²

3. Is SWBT obligated under and/or prohibited by state or federal law to disclose customer proprietary network information to a third party database provider to maintain the State's 9-1-1 database and route 9-1-1 calls?

State and federal law do not prohibit SWBT from disclosing customer proprietary network information (CPNI) to a third party database provider to maintain the State's 9-1-1 database and route 9-1-1 calls. In fact, requiring SWBT to provide CPNI to SCC for 9-1-1 database management and call routing would be consistent with the purposes of the federal CPNI statute and previous FCC and Department of Justice rulings.

Section 222 of the FTA prohibits telecommunications carriers like SWBT from using, disclosing, or permitting access to individually identifiable CPNI except in their provision of the telecommunications service from which such information is derived, or services necessary to, or

¹² To further the Commission's mandate to "...accelerate the improvement of telecommunications in this state," SCC's advanced technological solution which allows real time updates should be implemented. If the Commission finds that the so-called technological concerns raised by SWBT in its Response at 6-8 are not merely SWBT's insistence on enforcement of SWBT's own internal policies, finding that there are legitimate technological concerns, those concerns are the precise reason the ACSEC has elected to contract with SCC to perform a trial to validate or invalidate those concerns, and thus, the Commission should order SWBT to cooperate in the trial as requested by Petitioners.

used in, the provision of such telecommunications service.¹³ CPNI includes "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier" as well as "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."¹⁴ CPNI does not include "subscriber list information," which is defined as a subscriber's name, address, and telephone number "that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."¹⁵

SWBT claims that section 222 prevents it from providing SCC with read-only access to SWBT's subscriber record source systems. SWBT is incorrect. First, to the extent that SCC seeks access to subscriber list information, section 222 does not apply. Moreover, section 222 applies only to CPNI that a telecommunications carrier receives or obtains by virtue of its provision of a telecommunications service. Under federal law, telecommunications services and information services are two distinct services,¹⁶ and E9-1-1 services are information services.¹⁷ Section 222 therefore does not apply to information that SWBT receives or obtains by virtue of its provision of E9-1-1 services.

Second, even if the information in SWBT's subscriber record system includes CPNI, providing SCC with access to that information so that it may provide E9-1-1 service is permissible under section 222(c). Although E9-1-1 service is not a "telecommunications service" within the

¹³ 47 U.S.C. § 222(c)(1). There are additional exceptions in section 222(d) that are not applicable here.

¹⁴ 47 U.S.C. § 222(f)(1).

¹⁵ 47 U.S.C. § 222(f)(3).

¹⁶ Compare 47 U.S.C. § 153(46) (defining "telecommunications service") with 47 U.S.C. § 153(20) (defining "information service").

¹⁷ *Forbearance Order*, ¶¶ 17-19.

meaning of section 222(c)(1)(A), it is "a service necessary to or used in" the provision of the telecommunications service from which the CPNI is derived under section 222(c)(1)(B). In determining that carriers may use CPNI without customer approval in order to provide inside wiring installation, maintenance, and repair services and publish directories, the FCC explained that "[s]uch services represent core carrier offerings that are both necessary to and used in the provision of existing service, which is precisely the purpose for which both Congress intended, and we believe customers expect, that CPNI be used."¹⁸ The ability to obtain access to emergency services by dialing 9-1-1 is clearly as integral to basic telecommunications service as wiring, maintenance, and directories, and using CPNI derived from the provision of basic telecommunications service to provide access to E9-1-1 is permissible under section 222(c)(1)(B).

Third, providing SCC with access to CPNI would also be consistent with the purposes of section 222. In the *CPNI Order*, the FCC explained that carriers may use CPNI, without customer approval, to market offerings that are related to the customer's existing service relationship with their carrier because a customer is aware that its carrier has access to CPNI, and, through subscription to the carrier's service, has implicitly approved the carrier's use of CPNI within that existing relationship.¹⁹ Likewise, SWBT's customers in Texas expect to be able to use 9-1-1 or E9-1-1 service and therefore have implicitly approved access to CPNI for the provision of emergency service.²⁰

¹⁸ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061 at ¶¶ 74, 80 (1998) (*CPNI Order*).

¹⁹ *Id.* at ¶ 23.

²⁰ Consumers are well aware of the availability of 9-1-1 service because of years of advertising and public interest announcements. For example, the very first page of the current Austin, Texas telephone directory contains 9-1-1 information. Moreover, the service quality standards to which all local providers must adhere include providing 9-1-1 emergency telephone service, see Service Quality Questionnaire for SPCOA Applicants, and access to 9-1-1 service provided by a local authority is included in basic network services in the Texas Utilities Code § 51.002(1).

Finally, requiring SWBT to provide SCC with access to CPNI necessary to maintain the State's 9-1-1 database and route 9-1-1 calls would not violate customers' privacy interests. The FCC previously has recognized the unique relationship between privacy and 9-1-1 service. For example, in the *Caller ID Order*, the FCC exempted calls to emergency lines from the federal requirement that carriers must respect a caller's request that his calling party number not be revealed, stating: "We believe that whether calls to emergency lines receive confidentiality is a public safety question that is best left to state and local government authorities."²¹ The FCC likewise concluded in the *Forbearance Order* that consumers' expectation of privacy may be greater in non-emergency situations than in emergency situations.²²

For similar reasons, the Department of Justice concluded that requiring wireless carriers to forward information regarding the location of a 9-1-1 caller to state or local public safety officials does not violate the Electronic Communications Privacy Act (ECPA)²³ or the Fourth Amendment to the United States Constitution.²⁴ ECPA requires wireless carriers to obtain a warrant, court order, or the consent of the customer before disclosing to governmental authorities information relating to that customer. While the Department of Justice concluded that disclosing the customer's physical location would likely fall within this prohibition, it found that providing this information to state or local public safety agencies after the caller has dialed 9-1-1 does not violate ECPA because the caller impliedly consents to the disclosure of information regarding his or her location at the time of the

²¹ *Rules and Policies Regarding Calling Number Identification Service-Caller ID*, CC Docket No. 91-281, Memorandum Opinion and Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 10 FCC Rcd 11700, 11740, ¶ 111 (1995).

²² *Forbearance Order* at ¶ 35.

²³ 18 U.S.C. § 2703 (Supp. 1996).

²⁴ Memorandum Opinion for John C. Keeney, Acting Assistant General, Criminal Division, Department of Justice, from Robert L. Shiffrin, Deputy Assistant Attorney General, Office of Legal Counsel (Sept. 10, 1996) (filed in FCC Docket No. 94-102 on Dec. 13, 1996).

call.²⁵ As the Department of Justice explained: “[The caller’s] decision to reach out to government officials to seek their help indicates that he would similarly tell them his location if it would help them respond to the emergency.”²⁶ A caller who dials 9-1-1 presumably would also consent to the disclosure of his CPNI if it would facilitate response to the emergency in the most efficient and effective manner.

4. Is the Commission’s ruling in the Mega-Arbitration I proceeding that “SWBT is not required to allow Signaling System 7 (SS7) advanced intelligent access from MCI’s Service Control Point” dispositive in this matter?

No, it is not dispositive. First, arbitration of carrier to carrier interconnection agreements involves a fundamentally different context – the weighing of the incumbent LEC’s interests against those of the CLECs as part of the effort to open the local market to competition. The Petitioners’ objective in this proceeding is very different. Petitioners seek to improve the State’s 9-1-1 system through implementing a technology previously tested by the parties in Houston that will deliver real-time routing information to SWBT’s E9-1-1 tandem. Thus, the question is whether the Commission will direct SWBT to provide what Petitioners’ have identified as a critical need, the functional unbundling of the way SWBT now handles 9-1-1 calls.

Second, what MCI sought was far broader than what Petitioners seek here. MCI wanted its SCP to control certain operations within SWBT’s switch using SS7 advanced intelligent network access so MCI could use SWBT’s switch as a platform on which to provide a variety of services different from or in addition to those inherently supported by SWBT’s switch. MCI’s purpose was to enhance its ability to compete in the local market by enabling it to distinguish its local offerings

²⁵ *Id.* at 5-6.

²⁶ *Id.* at 6. The Department of Justice also concluded that the Fourth Amendment’s prohibition against “unreasonable searches” does not prohibit the transmission of location information because of the caller’s implied consent to the disclosure and because the caller does not have a reasonable expectation of privacy with regard to his or her whereabouts at the time of the call. *Id.* at 7-8.

from SWBT's while still using SWBT's facilities. MCI's request applied to all of SWBT's switch facilities and it was open ended such that there would have been no limit on the instructions MCI could have given to SWBT's switches had the Commission granted MCI's request. Moreover, a decision in MCI's favor would have created the same opportunities for every CLEC utilizing SWBT's unbundled network elements.

What Petitioners are seeking is limited in scope and deployment. Petitioners propose to interconnect SCC equipment at SWBT's E9-1-1 tandem Selective Routers such that SWBT's Routers will query SCC's ALI database for routing instructions. This is a simple and straightforward query and response type of message, no different in concept than a query and response to the national LNP database maintained by Lockheed Martin. Petitioners are not asking that every switch in SWBT's network have this capability, nor are Petitioners asking that multiple dialed number triggers be loaded into SWBT switches for multiple services, each based on separate dialed digits. Only a 9-1-1 call triggers the query function; only routing information is sent back in the response.

Third, as a practical matter, the arbitration award cannot control the outcome of this case because Petitioners' issues were never raised in the Mega-Arbitration I. Even if the Commission has not precluded intervention in arbitration proceedings, it is extremely unlikely that Petitioners and SCC as non-CLECs would have been allowed to intervene in a section 251 arbitration to present a distinct set of 9-1-1 issues not germane to MCI's objective.

Last, the Commission's arbitration ruling never was intended to be the last word on the issue even with respect to CLECs. Instead, the ruling explicitly granted CLECs an opportunity to reopen this issue in the future. The Staff recommendation which the Commissioners approved recognized that a contrary decision had been made by the Illinois Commission with respect to limited connectivity and that a final decision on the MCI request would await industry developments.

The Petitioners' circumstances and their issues are distinct from the competitive carrier issues addressed by the Commission in the Mega-Arbitration I. As a result, a decision reached in the context of that arbitration award cannot dictate the outcome of this Docket.

5. Are third parties that provide 9-1-1 database services required to obtain an appropriate certificate in order to interconnect under § 251(c) of the federal Telecommunications Act of 1996?

The provisions governing interconnection under the FTA are inapplicable to SCC; therefore, SCC does not seek to "interconnect" under § 251(c) and it is immaterial whether SCC obtains State certification.

Section 251(c) requires LECs to interconnect with any requesting telecommunications carrier. Section 3(44) of the FTA defines a "telecommunications carrier" as "any provider of telecommunications services, except that such term does not include aggregators . . . (as defined in section 226)." "Telecommunications service" is defined in § 3(46) to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." The term "telecommunications" is defined in § 3(43) as "the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received." SCC's database management activities do not fit within this definition.

Thus, looking to the FTA in order to determine the extent of SWBT's obligations to the Petitioners is simply wrong. The Commission's authority to decide the issues raised by Petitioners lies outside the FTA as SCC stated in its introductory remarks and briefing of Issues 1 and 2 above.

6. Does the FCC's 9-1-1 *Forbearance Order* impact this case, if at all?

The FCC's *Forbearance Order* demonstrates the FCC's support for competition in the provision of E9-1-1 services and provides guidance regarding the relationship between this need for

competition and the applicability of other requirements under the FTA. The *Forbearance Order*, however, was the result of a limited review of a specific statutory provision. It is not the final word on all of SWBT's 9-1-1 obligations under state or federal law.

The *Forbearance Order* addressed petitions filed by several BOCs requesting that the FCC forbear from applying the separate affiliate requirements of section 272 of the FTA to E9-1-1 services. The FCC decided to grant the BOCs' request. Because of the BOCs' position as the dominant providers of 9-1-1 and E9-1-1 services within their regions, however, the FCC found that their retention of exclusive access to the information needed to provide E9-1-1 service would be unreasonably discriminatory and would preclude competitors from offering their own E9-1-1 service.²⁷ In order to ensure that competitors would not be disadvantaged by forbearance from the separate affiliate requirement, the FCC conditioned forbearance on the BOCs' making available to unaffiliated entities the listing information that the BOCs use to provide their E9-1-1 services.²⁸

The FCC required the BOCs to provide all listing information, including unlisted numbers, unpublished numbers, and the numbers of other LECs' customers, but it did not limit the BOCs' obligation to providing only these specific data.²⁹ Instead, the FCC reasoned that, before the BOCs could receive the special relief they were requesting, competitors had to be placed on the same footing as the BOCs -- *i.e.*, they had to have access to all the data that enables the BOCs to provide

²⁷ *Id.* at ¶¶ 30 & 31. The FCC also noted that the inclusion of nondiscriminatory access to 9-1-1 and E9-1-1 services in the competitive checklist that a BOC must satisfy to obtain authorization to provide in-region interLATA services implicitly recognizes the BOCs' unique position in the provision of those services. *Id.*

²⁸ *Id.* at ¶ 28; *see also* ¶ 34.

²⁹ *Id.* at ¶ 34.

E9-1-1 service.³⁰ In the present proceeding, in order to provide E9-1-1 database services to the State of Texas, SCC needs to have access to the same information that SWBT itself uses in the provision of 9-1-1 service.

In its Response to the Original Petition at 5, SWBT noted that the FCC declined to require the BOCs to provide selective routing information to unaffiliated entities in the *Forbearance Order*. In fact, the FCC concluded only that the issue of BOC requirements to provide E9-1-1 routing information was beyond the scope of that particular proceeding.³¹ Because Section 272 does not address the routing of E9-1-1 calls, the FCC explained that it was not necessary to decide the nature and extent of LEC obligations to provide E9-1-1 routing information in the *Forbearance Order*.³² Likewise, the FCC concluded that it did not need to address the nature and extent of the LECs' obligations to provide such information under Section 251 of the FTA in order to forbear from applying Section 272.³³

The *Forbearance Order* therefore confirms that SWBT has an obligation to provide SCC with the same subscriber information that SWBT itself needs and uses in the provision of 9-1-1 service. This obligation is a condition of the FCC's decision that SWBT does not have to provide E9-1-1 service through a separate subsidiary. While the *Forbearance Order* does not specifically require SWBT to provide access to its source systems for error correction or to query SCC's database to obtain routing information, neither does the *Order* preclude the states from establishing additional requirements in order to ensure the timely and accurate delivery of emergency services.

³⁰ *Id.*


³¹ *Id.* at ¶¶ 36-38.

³² *Id.*

³³ *Id.* at ¶ 37.

Respectfully submitted,

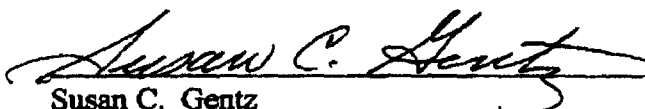
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ATTORNEYS FOR SCC COMMUNICATIONS
CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SCC Communications Corporation's Brief on Threshold Legal/Policy Issues has been served on all parties of record via first class U.S. mail, facsimile, or hand delivery on this the 12th day of February, 1999.


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MESSAGE:

Here is a copy of what we filed. We got your changes in too late to incorporate some of them. We didn't delete some of the info in the CPNI section because we didn't need the space. We did add your insert and most of the other substantive changes. Thanks so much for your help!

DOCKET NO. 20334

EMERGENCY PETITION OF THE	§	
ADVISORY COMMISSION ON STATE	§	
EMERGENCY COMMUNICATIONS	§	
AND THE GREATER HARRIS	§	
COUNTY 9-1-1 NETWORK FOR	§	PUBLIC UTILITY COMMISSION
DECLARATORY RULINGS ORDERING	§	
SOUTHWESTERN BELL TELEPHONE	§	OF TEXAS
COMPANY TO UNBUNDLE ITS 9-1-1	§	
NETWORK AND 9-1-1 DATABASE	§	
MANAGEMENT SYSTEM	§	

SCC COMMUNICATIONS CORPORATION'S
MOTION TO INTERVENE

TO THE HONORABLE COMMISSION:

COMES NOW SCC Communications Corporation ("SCC") and files this Motion to Intervene and states as follows:

I. Intervention

SCC seeks to intervene and participate in this proceeding pursuant to PUC Procedural Rules 22.103(b) and 22.104. SCC is an "affected person" as that term is defined in PUC Procedural Rule 22.2 and § 11.003(1) of the Texas Utilities Code. As explained fully below, SCC will be affected by the Commission's decision in this proceeding and is a necessary party.

II. Background on SCC

SCC is the largest and fastest-growing provider of 9-1-1 services and telecommunication technology systems in North America. Based in Boulder, Colorado, SCC began providing 9-1-1 solutions to the public safety marketplace in 1989. Today, SCC provides E9-1-1 systems or services to the majority of the largest telecommunications companies in North America.

SCC currently serves as the 9-1-1 database provider for several major Incumbent Local Exchange Carriers ("ILEC") representing over 75 million database records in 28 states. SCC also provides 9-1-1 database management services for several large Competitive Local Exchange Carriers ("CLEC") through its Clearinghouse Services organization. As part of its offering to CLECs, SCC delivers 9-1-1 data to all ILEC systems nationwide. In addition to wireline services, SCC provides Phase I wireless 9-1-1 services on a nationwide basis to several large wireless carriers. SCC receives and processes over 160,000 9-1-1 service orders per day. SCC's staff of data integrity analysts provide daily support to over 2,000 Public Safety Answering Points nationwide. SCC's Clearinghouse Services organization currently is providing data on a regular basis to Southwestern Bell Telephone Company ("SWBT") and GTE Southwest Incorporated systems on behalf of SCC's CLEC clients doing business in Texas.

SCC has demonstrated its commitment to providing database management services that are unparalleled in their use of innovative technology while maintaining the highest standards of data security and performance reliability. Having been selected by the Advisory Commission on State Emergency Communications ("ACSEC") after a thorough public procurement process, SCC now stands ready to provide these services in Texas, including neutral (third-party) management of the MSAG and ALI databases, performance metrics which stringently measure its own operations and the accuracy of 9-1-1 data submitted by the ILECs and CLECs, and the delivery of wireless caller location finding systems.

III. SCC's Justiciable Interest

On November 17, 1998, the General Services Commission for the State of Texas and SCC entered into a written agreement which obligates SCC to provide E9-1-1 Database Management Services for the State of Texas including, inter alia, delivery of real-time ALI data; the award of that contract is contingent upon successful performance of a pilot project in the Greater Harris County 9-1-1 Emergency District. Since the date of award of the contract, SCC has purchased equipment, provisioned network connectivity, employed additional staff,

worked diligently to begin implementation of the pilot project, and otherwise taken affirmative steps, in good faith and at great expense, on behalf of the State of Texas to fulfill SCC's contractual obligations. SCC also has participated in numerous meetings with SWBT, the current provider of 9-1-1 database services in the District, and the ACSEC to address network and database information sharing issues that must be resolved. Despite SCC's best efforts, however, SWBT is denying SCC access to essential selective routing functionality as well as read-only access to its source systems, which access is necessary for SCC to be able to perform its contractual obligations. This circumstance is likely to continue if this obstacle is not removed.

Specifically, in its effort to improve the State's 9-1-1 emergency network, the ACSEC and the General Services Commission issued a request for proposals and conducted a competitive bidding process designed to elicit the most advanced and most economically efficient provision of database services. SCC proposed in its bid response to provide real-time, ALI-based selective routing for 9-1-1 calls. This real-time, ALI-based selective routing creates significant operating efficiencies because the routing data resident in SCC's database is updated at the same time the ALI database is updated for a customer of an ILEC or CLEC. Thus, there are no issues relative to the timing of updates or the synchronization of the databases. Currently, SWBT does not update ALI systems on a real time basis, but instead does so periodically in batches. SCC's contractual obligations also provide for stringent criteria for maintaining accurate subscriber data as well as "metrics," i.e., measurements of SCC's performance. These additional contract obligations give the State of Texas a highly objective method for assessing the performance of its E9-1-1 database management provider — SCC — an assessment method not offered by the current E9-1-1 database management provider. Further, it gives the State of Texas greater ability to judge the performance of ILECs and CLECs in their maintenance of 9-1-1 records.

The public interest is best served when the benefits of advanced technology are made available to the citizens of Texas. The E9-1-1 system in Texas can be improved through real-

time subscriber data updates and the imposition of enhanced performance criteria on the database provider. SCC can deliver these improvements and has contracted with the State of Texas to do so. SCC joins ACSEC in asking this Commission to make sure that the citizens of Texas are not being deprived of the advantages these technological advancements can bring to E9-1-1 today.

SCC has been providing real-time, ALI-based selective routing for 9-1-1 calls in other states, working successfully with other ILECs, for the past eight years. SWBT has formally refused SCC's requests to accept routing instructions from SCC, as well as refused to allow SCC read-only visibility to the SWBT source systems. SWBT's refusal to accept real-time routing information is incomprehensible to SCC given that SCC is the State's selected provider of E9-1-1 database services and in light of the fact that SCC provided identical, real-time, ALI-based selective routing information to SWBT's Houston tandem during the wireless implementation program conducted in the Greater Harris 9-1-1 District in 1996 without incident or complaint from SWBT. Moreover, SWBT has failed to provide an acceptable alternative for real-time selective routing that comports with the ACSEC's stated preferred technical solution. This stand-off appears likely to continue indefinitely absent Commission action.

SCC has a vested interest in the Commission's decisions and actions regarding the issues raised in ACSEC's Emergency Petition, and SCC should be allowed to assist the Commission in reviewing the real reasons SWBT refuses to allow an open architecture for E9-1-1 in Texas.

IV. Representation

SCC's counsel for purposes of the service list to be maintained in this proceeding is:

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WHEREFORE, PREMISES CONSIDERED, SCC respectfully requests that its Motion to Intervene in this proceeding be granted and that it be added to the service list.

Respectfully submitted,

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By:

Susan C. Gentz
State Bar ID No. 07803500

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CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing SCC Communications Corporation's Motion to Intervene has been served on all parties of record via first class U.S. mail, facsimile, or hand delivery on this the 19th day of January, 1999.

Susan C. Gentz